1273.

SUPREME COURT OF THE UNITED STATES.

No. 172.

WILLIAM CRAWFORD AND DAVID FILES, PLAINTIFFS IN ERROR,

vs.

THE BRANCH BANK OF ALABAMA AT MOBILE.

IN ERROR TO THE SUPREME COURT OF ALABAMA.

INDEX.

	Original.	Print.
Writ of error	1	2
Citation and service	3	3
Transcript from circuit court	4	3
Bond on appeal to supreme court of Alabama	6	6
Citation	7	6
Proceedings in Supreme Court	8	7
Assignment of errors	9	8
Judgment	10	9
Clerk's certificate	10	9

J. & G. S. Gideon, Printers.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable judges of the supreme court of the State of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of judgment of a plea, which is in the said supreme court before you, being the highest court of law and equity in said State in which a decision could be had, in a suit between William Crawford and David Files and the Branch of the Bank of the State of Alabama, at Mobile, wherein was drawn in question the validity of a treaty, or statute, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute, or of a commission held under the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the Constitution, treaty, or statute, or commission; a manifest error hath happened to the great damage of the said William Crawford and David Files, as by their complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause to be further done therein, to correct that error, what of right and according to the laws and custom of the United States should be done. This 26th of February, 1848.

JOHN FITTS,
Clerk, C. C., So. dist., Ala.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court, this 26th day of February, in the year of our Lord one thousand eight hundred and forty-eight.

JOHN FITTS,
Clerk, C. C., So. Dis., Ala.

Allowed by J. McKINLEY.

It is ordered, that the said William Crawford and John Fitts, as his surety, enter into a bond in the sum of two hundred dollars, conditioned for the payment of costs. J. McKINLEY.

THE UNITED STATES OF AMERICA:

To the branch of the Bank of the State of Alabama at Mobile:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Alabama, wherein William Crawford and David Files are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 26th day of February, in the year of our Lord one thousand eight hundred and forty-eight.

J. McKINLEY.

Executed this citation on Henry B. Holcomb, assistant commissioner of the Branch of the Bank of the State of Alabama, at Mobile, 26th October, 1848.

J. G. LYON, *U. S. M.*
By GEO. BANCROFT, *D. M.*

THE STATE OF ALABAMA:

Be it remembered, that on the sixteenth day of December, in the year of our Lord one thousand eight hundred and forty-four, there was filed in the clerk's office of the supreme court of said State a writ of error and transcript of record, in the words and figures following, that is to say:

Writ of error.

The State of Alabama, to the clerk of the circuit court of Mobile county, greeting:

Whereas it is represented that, in the record and proceedings of a cause had and determined at a term of the circuit court, begun and held for the county of Mobile, on the fourth Monday after the fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-four, wherein the Branch of the Bank of the State of Alabama, at Mobile, plaintiffs, and William Crawford and David Files, defendants, manifest error hath intervened, to the damage of the said defendants: Therefore, we command you to send, certified under your hand and official seal, a transcript of the record in said cause to the judges of our supreme court, at a term thereof to be holden on the first Monday of January next, that, if error there be, the same may be corrected.

Witness Augustus Brooks, clerk of our said court, at office, this 27th day of July, in the year of our Lord one thousand eight hundred and forty-four, and of American independence the 68th year.

Issued 27th day of July, 1844.

Attest: A. BROOKS, *Clerk*.

STATE OF ALABAMA, *Mobile county:*

Pleas before the honorable Samuel Chapman, presiding judge of the circuit court for Mobile county, and State aforesaid, at a term thereof begun and held in and for said county, on the fourth Monday after the fourth Monday of March, A. D. 1844.

Notice.

To William Crawford and David Files, (joint makers with R. G. Gordon.)

Take notice, that at the next term of the circuit court, to be held for the county of Mobile, on the fourth Monday after the fourth Monday of March instanter, on the third Monday of said court, I, T. L. Toulmin, as president of the Branch of the Bank of the State of Alabama, at Mobile, will move said court for judgment against you, for and on behalf of said Branch bank, as the makers of a promissory note, expressly made payable and negotiable at the said Branch bank, which note bears date 31st day of May, 1841, by which note you, as makers thereof, promised, two hundred and fifteen days after the date, to pay B. Gayle, cashier, or order, the sum of three thousand eight hundred and seventeen $\frac{50}{100}$ dollars, for value received, which said promissory note is regularly endorsed to said bank, and was protested for non-payment, of which you had due and proper notice.

T. L. TOULMIN, *President.*
G. F. LINDSAY, *Bank Attorney.*

Issued 23d day of March, 1844.

The agent of the Branch of the Bank *of the Bank* of the State of Alabama, at Mobile, will execute this notice according to law, and return the same to the cashier of the Branch bank at Mobile by the 1st May next.

I, T. L. Toulmin, president of the Branch of the Bank of the State of Alabama, at Mobile, do hereby certify, that the promissory note described in the foregoing notice was, when the same was protested, and now is, really and bona fide the property of said Branch bank.

Given under my hand this 31st day of March, 1844.

T. L. TOULMIN, *President.*

Received March 22d, 1844, and executed on David Files on the 23d March, 1844, and on William Crawford 5th April, 1844.

JACOB S. MARSH,
Agent Branch bank at Mobile.

And on the 10th May, 1844, being a day of the spring term, 1844, the following judgment was entered up, to wit:

BRANCH of the Bank of the State of Alabama, at Mobile,
vs.
WILLIAM CRAWFORD and David Files.

This day came the parties by their attorneys, and the plaintiff moved the court now here for judgment against the defendants, a[s] makers of a promissory note for the sum of thirty-eight hundred and seventeen $\frac{50}{100}$ dollars, made by the said defendants and Robert G. Gordon, dated 31st day of May, 1841, payable, two hundred and fifteen days after date, to B. Gayle, cashier, or order, and negotiable and payable at the Branch of the Bank of the State of Alabama, at Mobile; and the plaintiff here produces and shews to the court the certificate of T. L. Toulmin, its president, that the said promissory note was, when the same was protested, and now is, really and bona fide the property of said Branch bank; and it appearing to the court that thirty days' notice of this motion has been given to the defendants:

Judgment.

Thereupon came a jury of good and lawful men, and who being elected, tried, and sworn well and truly to try the issue joined, on their oaths do say:

We, the jury, find for the plaintiff, and assess the damages at forty-five hundred and thirty-seven $\frac{20}{100}$.

It is therefore considered by the court that the plaintiff recover of the said William Crawford and David Files the said sum of forty-five hundred and thirty-seven $\frac{20}{100}$ dollars, the damages so assessed by the jury aforesaid, together with the costs in this behalf expended.

Bill of exceptions.

BRANCH of the Bank of the State of Alabama, at Mobile,
vs.
WILLIAM CRAWFORD and David Files.

Upon the trial of this cause, the plaintiff produced the original papers hereto attached, marked A, being the notice, the certificates and returns, the note, and protest, and moved for judgment without further proof of the same. The defendants objected to the court taking cognizance of the case or allowing judgment, which was overruled and judgment entered; to which the defendants object, and pray the court to sign and seal this bill, which is done.

SAMUEL CHAPMAN,
Judge. [SEAL.]

I, Augustus Brooks, clerk of the circuit court for Mobile county and State of Alabama, do hereby certify, that the foregoing is a full and

complete transcript of all the proceedings had in the above entitled case, as full and complete as they remain of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said court, this seventh day of November, A. D. 1844.

A. BROOKS,
Clerk. [SEAL.]

THE STATE OF ALABAMA, *Mobile county:*

Know all men by these presents, that we, William Crawford et al., are held and firmly bound unto the Branch of the Bank of the State of Alabama, at Mobile, in the sum of nine thousand and seventy-four dollars and forty cents, for the payment of which we jointly and severally bind ourselves, our heirs, executors, or administrators, firmly by these presents. Sealed with our seals, and dated this 27th day of July, 1844.

The condition of the above obligation is such, that whereas the above bounden William Crawford has this day applied for and obtained a writ of error, returnable to the January term, 1845, of the supreme court of Alabama, to supersede and reverse a judgment recovered by said Branch of the Bank of the State of Alabama, against the said William Crawford and David Files, at the spring term, 1844, of the circuit court of Mobile county, for forty-five hundred and thirty-seven dollars and 20 cents, besides costs.

Now, if the said William Crawford shall prosecute to effect his said suit in the supreme court of the said State of Alabama, and shall pay and satisfy such judgment as the supreme court shall render in the premises, then this obligation to be null and void, otherwise to be and remain in full force and effect.

WM. CRAWFORD, [SEAL.]
J. E. SAWYER. [SEAL.]

A true copy from the original.

A. BROOKS, *Clerk.*

The State of Alabama, Mobile county circuit court, to the sheriff of Mobile county, greeting:

Whereas at a term of the circuit court of Mobile county, held on the 4th Monday after the 4th Monday of March, 1844, in a certain cause in said court, wherein the Branch of the Bank of the State of Alabama is plaintiff, and William Crawford and David Files, defendants, a judgment was rendered against said defendants for the sum of forty-five hundred and thirty-seven $\frac{20}{100}$ dollars, to reverse which William Crawford hath this day applied for and obtained, from this office, a writ of error returnable to the next term of our supreme court of the State of Alabama, to be held at Tuscaloosa on the first Monday of January next, and the necessary bond having been given by the said William Crawford, with J. E. Sawyer, surety: Now, you are hereby commanded without delay to cite the said Branch bank, or its attorney, to appear at the next term of our said supreme court, to defend against the said writ of error if they think proper.

Witness Augustus Brooks, clerk of the circuit court of said county, this 27th day of July, 1844.

Attest: A. BROOKS, *Clerk.*

The original of the following papers was returned to the circuit court of Mobile county, by order of the supreme court, and the following copies retained and made part of the record:

$3,817 $\frac{50}{100}$.

Two hundred and fifteen days after date, we jointly and severally promise to pay to B. Gayle, cashier, or order, three thousand and eight hundred and seventeen $\frac{50}{100}$ dollars, negotiable and payable at the Branch of the Bank of the State of Alabama, at Mobile, for value received, this 31st day of May, 1841.

WILLIAM CRAWFORD,
DAVID FILES,
R. G. GORDON.

$3,817 50.

Two hundred and fifteen days after date, we jointly and severally promise to pay to B. Gayle, cashier, or order, three thousand eight hundred and seventeen $\frac{50}{100}$ dollars, negotiable and payable at the Branch of the Bank of the State of Alabama, at Mobile, for value received, this 31st day of May, 1841.

WILLIAM CRAWFORD,
DAVID FILES,
R. G. GORDON.

STATE OF ALABAMA, *city and county of Mobile:*

Be it known that I, J. W. Lang, notary public, duly commissioned and sworn, dwelling in the city of Mobile, and State of Alabama, on the fourth day of January, in the year of our Lord one thousand eight hundred and forty-two, at the request of the president and directors of the Branch of the Bank of the State of Alabama, at Mobile, did present the original note, a true copy of which is above written, at the counter of the Branch of the Bank of the State of Alabama, at Mobile, and payment thereof did demand; and was then and there answered, no funds. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawers and endorsers of said note, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest, incurred or hereafter to be incurred, for want of payment of said note. Thus done and protested in the city of Mobile aforesaid.

In testimony whereof I have hereunto set my hand and affixed my seal the day and year aforesaid.

J. W. LANG, *Notary public.*

To William Crawford and David Files, joint makers with R. G. Gordon:

Take notice, that at the next term of the circuit court to be held for the county of Mobile, on the 4th Monday after the 4th Monday of

March instant, on the third Monday of said court, I, T. L. Toulmin, as president of the Branch of the Bank of the State of Alabama, at Mobile, will move said court for judgment against you, for and on behalf of said *bank* Branch bank, as the makers of a promissory note expressly made payable and negotiable at the Branch bank, which note bears date 31st May, 1841; by which note you, as makers thereof, promised, 215 days after date, to pay B. Gayle, cashier, or order, the sum of three thousand eight hundred and seventeen $\frac{50}{100}$ dollars for value received; which said promissory note is regularly endorsed to said bank, and was protested for non-payment on the day of of which you had due and proper notice.

T. L. TOULMIN, *President.*
E. F. LINDSAY, *Bank attorney.*

Issued 23d day of March, 1844.

The agent of the Branch of the Bank of the State of Alabama, at Mobile, will execute this notice according to law, and return the same to the cashier of the Branch bank at Mobile, by the 1st of May next.

I, T. L. Toulmin, president of the Branch of the Bank of the State of Alabama, at Mobile, do hereby certify, that the promissory note described in the foregoing notice was, when the same was protested, and now is, really and bona fide the property of said Branch bank.

Given under my hand this 23d day of March, 1844.

T. L. TOULMIN, *President.*

And at the January term of the supreme court of Alabama, came the said plaintiff in error, pro se, and filed the following assignment of errors in the cause:

Supreme court of Alabama.

WILLIAM CRAWFORD
vs.
THE BRANCH BANK, at Mobile. } January term of said court, 1845.

Assignment of errors.

And the said William Crawford comes, when, &c., and says, that there is error in the record and proceedings of the court below, in this, to wit:

1. That it appears from the record and the note upon which the suit is founded, and which is made a part of it by the bill of exceptions, that the said promissory note was made payable to B. Gayle, cashier, and that the said note has not been assigned to the said Branch bank, nor was it alleged or proved, as the judgment entry shews, that the said note was made or given to the said Branch bank by the name of B. Gayle, nor that B. Gayle acted as the agent of the said bank in taking said note; and that it doth not appear, from the record, that the said Branch bank has any interest in the said note.

2. That there is error in this, that it was not proved to the court below that Jacob J. Marsh, who returned the notice executed, styling

himself agent for the said Branch bank, nor that his handwriting was proved; but, on the contrary, it is stated, in the bill of exceptions, that there was no proof to that effect.

WILLIAM CRAWFORD, *for himself.*

And the said defendant, by attorney, comes and says there is no error in the record.

For defendant in error.

Judgment of the supreme court.

And thereupon, on the day of A. D. 1845, being a day of the January term of the supreme court, 1845, present all the judges of the said court, came the said parties, by their attorneys; and the record in this cause being examined, and due deliberation thereon had, it seems to the court, that in the record and proceedings in said circuit court there is no error. It is therefore considered that the judgment of said circuit court be affirmed. That defendant in error recover of the plaintiffs and of J. E. Sawyer, the surety for the writ of error in this cause, the amount of the judgment of said circuit court, ten per cent. damages thereon and interest, and the costs of this cause in this court and in said circuit court.

I, James B. Wallace, clerk of the supreme court of the State of Alabama, do hereby certify, that the foregoing is a complete and perfect transcript of the record filed in said court, at January term, 1845, of said court, and the proceedings thereupon had; the originals of all of which are on file and remain of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the Capitol, this 9th day of December, in the year of our Lord one thousand eight hundred and forty-six.

[SEAL.]

JAMES B. WALLACE,
Clerk supreme court, Alabama.

Filed 18th Nov., 1848.